

Paul J. Riehle (SBN 115199)
 paul.riehle@faegredrinker.com
**FAEGRE DRINKER BIDDLE
 & REATH LLP**
 Four Embarcadero Center
 San Francisco, California 94111
 Telephone: (415) 591-7500
 Facsimile: (415) 591-7510

Christine A. Varney (*pro hac vice*)
 cvarney@cravath.com
 Katherine B. Forrest (*pro hac vice*)
 kforrest@cravath.com
 Gary A. Bornstein (*pro hac vice*)
 gbornstein@cravath.com
 Yonatan Even (*pro hac vice*)
 yeven@cravath.com
 Lauren A. Moskowitz (*pro hac vice*)
 lmoskowitz@cravath.com
 M. Brent Byars (*pro hac vice*)
 mbyars@cravath.com
CRAVATH, SWAINE & MOORE LLP
 825 Eighth Avenue
 New York, New York 10019
 Telephone: (212) 474-1000
 Facsimile: (212) 474-3700

*Attorneys for Plaintiff and Counter-
 defendant Epic Games, Inc.*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

EPIC GAMES, INC.,

 Plaintiff, Counter-defendant,

 v.

 APPLE INC.,

 Defendant, Counterclaimant.

IN RE APPLE IPHONE ANTITRUST
 LITIGATION.

DONALD R. CAMERON, et al.,

 Plaintiffs,

 v.

 APPLE INC.,

 Defendant.

Case No. 4:20-cv-05640-YGR-TSH
 Case No. 4:11-cv-06714-YGR-TSH
 Case No. 4:19-cv-03074-YGR-TSH

**DECLARATION OF GARY A.
 BORNSTEIN IN SUPPORT OF EPIC
 GAMES, INC.'S MOTION FOR
 ADMINISTRATIVE RELIEF TO
 ACCESS SEALED FILINGS IN
 RELATED CASES**

Judge: Hon. Yvonne Gonzalez Rogers

DECLARATION OF GARY A. BORNSTEIN
 Case Nos. 4:20-cv-05640-YGR-TSH; 4:11-cv-06714-YGR-TSH; 4:19-cv-03074-YGR-TSH

1 I, Gary A. Bornstein, declare as follows:

2 1. I am an attorney licensed to practice in the State of New York and admitted to
3 appear before this Court *pro hac vice* in *Epic Games, Inc. v. Apple Inc.*, Case No. 4:20-cv-
4 05640-YGR-TSH. I am a partner at the law firm of Cravath, Swaine & Moore LLP and am one
5 of the attorneys representing Epic Games, Inc. (“Epic”) in the above-captioned action.

6 2. I submit this declaration in support of Epic’s Motion for Administrative Relief
7 to Access Sealed Filings in Related Cases. The contents of this declaration are based on my
8 personal knowledge except as to matters stated on information and belief. As to those matters
9 stated on information and belief, I am informed and believe them to be true. If called to be a
10 witness, I could and would testify competently to the contents of this declaration.

11 3. On May 31, 2021, counsel for Defendant Apple Inc. (“Apple”) sent a letter by
12 email to counsel for Epic, and the attorneys representing the plaintiffs in the related class
13 actions. In that letter, Apple’s counsel wrote: “With the conclusion of the trial in *Epic Games,*
14 *Inc. v. Apple Inc.*, Case No. 4:20-cv-05640-YGR-TSH (N.D. Cal.), it is no longer appropriate
15 to coordinate discovery efforts with Epic pursuant to the Court’s Order Regarding Coordination
16 of Discovery.” A true and correct copy of Apple’s May 31, 2021 letter is attached to this
17 declaration as **Exhibit A**.

18 4. On June 2, 2021, counsel for the developer plaintiffs asked Apple to “confirm
19 that Apple is not objecting to Developer Plaintiffs sharing their sealed class certification
20 submissions with Epic.” On June 3, 2021, counsel for Apple responded: “Apple sees no
21 reason or basis for Developer Plaintiffs to share their sealed class certification submission with
22 Epic’s counsel. We want to reiterate that Consumer and Developer Plaintiffs should not send
23 any new materials to Epic’s counsel as discovery and trial have already concluded in the Epic
24 matter.” A true and correct copy of these emails is attached to this declaration as **Exhibit B**.

25 5. On June 16, 2021, I sent a letter to counsel for Apple responding to its May 31,
26 2021 letter and June 3, 2021 email. This letter informed Apple of Epic’s position that “Apple
27 has no basis to prevent Epic from receiving the class certification filings” and explained Epic’s
28 need for these filings. The letter also objected to Apple’s refusal to “continue producing

1 discovery to Epic pursuant to the terms of the Coordination Order.” A true and correct copy of
2 Epic’s June 16, 2021 letter is attached to this declaration as **Exhibit C**.

3 6. On June 25, 2021, counsel for Apple sent a letter to counsel for Epic responding
4 to my June 16, 2021 letter. Counsel for Apple wrote that Apple was rejecting Epic’s request
5 “that Apple continue producing discovery to Epic pursuant to [the Coordination] Order”.
6 Counsel for Apple also wrote that “Apple is under no obligation to allow Epic to receive class
7 certification filings in the related matters” and declined Epic’s request to provide the
8 unredacted class certification filings to Epic. A true and correct copy of Apple’s June 25, 2021
9 letter is attached to this declaration as **Exhibit D**.

10 7. On July 8, 2021, counsel for Apple sent a letter to counsel for non-party
11 Microsoft Corp. Apple reiterated its previous request for Microsoft’s communications with
12 Epic, Epic’s counsel, and Epic’s experts. A true and correct copy of Apple’s July 8, 2021 letter
13 is attached to this declaration as **Exhibit E**.

14 8. On July 15, 2021, counsel for Epic and counsel for Apple met and conferred
15 regarding this dispute.

16 9. On July 21, 2021, counsel for Apple “confirm[ed] Apple’s position that Epic is
17 not entitled to continued discovery now that discovery and trial have ended in the Epic case,
18 and having opted out of the developer class, Epic is not entitled to sealed filings from the class
19 actions”.

20 10. On August 10, 2021 and August 11, 2021, Apple filed its oppositions and
21 related pleadings in connection with the consumer and developer plaintiffs’ motions for class
22 certification.

23 11. On August 13, 2021, counsel for Epic sent an email to counsel for Apple
24 seeking unredacted copies of Apple’s August 10, 2021 and August 11, 2021 filings. Later that
25 day, Apple informed counsel for Epic that “Apple’s position on this issue is unchanged.” A
26 true and correct copy of these emails is attached to this declaration as **Exhibit F**.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
2 true and correct and that I executed this declaration on August 20, 2021, in Riverside,
3 Connecticut.

4
5
6 /s/ Gary A. Bornstein

7 Gary A. Bornstein
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28